

Letter (General) (19²²) Department

Mr. SERIES. ✓

G.O. No. 2751

DATED 25-7-32

[Despatch Abstract.]

Annual Appeal against acquittal
 services Case No 10/32 Session
 Judge, South Kanara
 declined.

ASSESSOR CASE.

In the Sessions Court, South Canara.

March Special Sessions.

Thursday, the 31st day of March 1932.

PRESENT:—N. CHANDRASEKHARA AIYAR, ESQUIRE, B. A., B. L.,
is Judge.

Sessions Case No. 10 of 1932.

NAMES OF THE ACCUSED.

1. Thimmappa Melai
2. Ammu Shetty.
3. Koraga Ballala.
4. Aithappa Pujari.
5. Babu Pujari.
6. Ummanna Moolya
7. Rama Moolya.
8. Abdulla Beary
9. Kanthu Pujari
10. Thoma Moolya.
11. Kunha Moolya.
12. Pandi Pujari.
13. Manjappa Pujari.

CHARGES.

1. Against all.
Rioting armed with deadly weapons—Section 148 I. P. C.
2. Against accused 1 to 3, 6, 7, 10 and 11.
Murder—Section 302 I. P. C.
3. Against accused 4, 5, 8, 9, 12 and 13.
Murder constructively—Sections 149 and 302 I. P. C.
4. Against accused 1, 6 and 11.
Voluntarily causing hurt—Section 323 I. P. C.

ASSESSORS.

- MESSRS. 1. M. Narasimha Kamath (Gowd Saraswath Brahmin.)
2. J. B. Louis (Roman Catholic Christian.)
3. B. Manjunath (Kshatriya.)
4. Narayana Prabhu (Gowd Saraswath Brahmin.)

OPINION OF ASSESSORS.

1ST ASSESSOR.

1st charge	2nd charge	3rd charge	4th charge
Accused 4 & 6 guilty as there might have been three or more than three with them at the time.	Not guilty	Not guilty	Not guilty
2ND do	do	do	not proved.
3RD do	do	do	do
4TH do	do	do	guilty.

FINDING OF THE JUDGE.

Not guilty.

ORDER.

All the accused are acquitted and set at liberty.

The accused were defended by Messrs. Nugent Grant, B. Lakkappa Rai, B. Narsinga Rao, G. Somasekhara Rao and H. Dasanna Alva (Private defence).

The case was committed by Mr. J. F. Rego, Sub Magistrate, Mangalore, in P. C. No. 13 of 1931 on his file.

This case coming on for trial on the 28th, 29th and 30th days of March 1932 and having stood over for consideration till this day, the Court delivered the following

J u d g m e n t.

1. One Ramanna Shetty, acting patel of Munnur village, was seriously wounded on the morning of 9—10—1931. He was brought to the Mangalore hospital the same day at about 10-30 a. m. but he died within a few minutes, even before any dying declaration could be taken from him. According to the post-mortem certificate, Exhibit A, granted by P. W. 1, the Assistant District Medical Officer, there were several injuries on his person—many of them incised ones, a fracture of the right tibia, and some contusions, and contused wounds. The incised injuries were 10 on the right leg, right heel, right knee, left upper arm above the elbow; the whole of the left leg and knee were severely contused; two contused vertical wounds, bone deep, were to be seen on the front of the right leg some inches below the knee; the back of the right hand had a contusion; there was a diffused contusion on the back of the left hand. Death was, of course, due to the shock caused by the multiple injuries and there cannot be much doubt that whoever attacked Ramanna that morning did so with the intention to kill. It is also reasonably clear that more than one took part in the occurrence.

2. It is alleged by the prosecution that the 13 accused before the court and one Krishnappa Melanta, patel of the adjoining village of Belma and elder brother 20 of the first accused, were those that set upon Ramanna and killed him. The first accused is the younger brother of Krishnappa Melanta; their sister is married to the 2nd accused; the 3rd accused lives in Kutharguthu near the house of 1st accused and is their staunch friend; accused 4 to 13 are the tenants of the Maganthadi house, the name given to the house of the Melantas. Krishnappa Melanta has been absconding ever since; his present whereabouts are unknown, and the case, which was adjourned several times in the court below in the hope of his being secured, had to proceed ultimately without him. He and the deceased Ramanna Shetty were inveterate foes; they were patels of neighbouring villages and each could not apparently brook the other's influence; the feud has been going on for some years and there were several 30 causes of enmity between them. It is not necessary to narrate their history or allude to all of them, as the existence of bitter enmity has not been disputed for the defence. Mention must, however, be made, of the last *causus belli*, for it was the proximate cause that induced the occurrence, according to the prosecution. There is a *lachil* forest or wild shrub jungle near the house of the deceased, to the north-west of it. Krishnappa and Ramanna were rival darkhast applicants for the same. About 10 or 15 days before the occurrence, the deceased cut firewood from this area, during Krishnappa's absence from the village. Krishnappa's sister Muthakke and some of her tenants, including the 6th accused, 8th accused and 11th accused, came and protested. Hot words passed between her and Ramanna; and there was scolding on 40 both sides. It is to the north of the *lachil* that Ramanna was attacked; the exact place is E in the plan, Exhibit N: after he was assaulted and injured, he was thrown at the place F and it was here that a crowd collected to see him before he was carried to his warehouse B, from which he was taken to the river side and thence transported in a boat to the hospital.

3. On the fateful day, Ramanna Shetty left his house, which is marked S in the plan and which is known as the Bollya house, to go to one Vasu Bhatta to get medicine for his sick wife; he said before leaving he would go to the warehouse and take his umbrella which he had left overnight there. After Ramanna left, his nephew, P. W. 8, went to the fields north of the house to plough; as the deceased 50 was leaving, his younger brother Vittal (P. W. 11) took the cattle to the *bellu* fields west of the house for grazing; another brother, Aithappa (P. W. 10) was then in the warehouse, where he runs a coffee shop and sleeps generally at nights taking care of the samans. Seethu (P. W. 9), the mother of the deceased, was at home.

4. Events appear to have moved pretty fast, for shortly afterwards, Vittal, the boy in charge of the cattle heard cries of "beat and kill" from the top of the *lachil*; he is not quite sure if the voice was that of the deceased or of his warehouse brother, Aithappa. He ran up to the top by the west of the *lachil* and there saw the beating of his brother. Accused 6, 7, 10 and 11 were beating him with cudgels, Krishnappa Melanta, and the other accused were standing near by: 60

there were swords in the hands of Krishnappa and 3rd accused; the rest had cudgels with them. The witness, who went as near as 10 feet of the place of beating, raised cries that his brother was being beaten and killed. Accused 6 and 11 beat him with twigs and he ran in the direction of his house by the eastern route and on the way he shouted what had happened to P. W. 8 who was ploughing. P. W. 9, the mother, says that shortly after Ramanna left, she milked the buffaloes and looked for Vittal to send milk as usual to the warehouse; not finding him, and learning that he was with the cattle in the *bellu* fields, she went in search and not seeing him there too, she was going further up the broad foot-path, when she heard his
0 cries "they beat and kill" to her right. She speeded up and met Krishnappa and accused 1 to 3 coming down in the opposite direction with swords and cudgels. She cried out to them, "Did you get rid of my son". The 1st accused pushed her aside; she fell down, the pot of milk was broken, and she got an injury on the forehead. But undaunted, she ran up very fast and met accused 5, 6 and 7 coming down fast, with stout cudgels in their hands. She proceeded still further and reached the top of the *padavu* or plateau of the *lachil* hill and from there saw her son Aithappa standing at a distance. He told her that Ramanna had been beaten and thrown down and that he too had been beaten and he advised her not to go near. She did not pay heed to his caution and went in the direction of the very top. There she
20 met the 4th accused coming down with a red shawl and scarf of her son and with a cudgel. She implored him to tell her what fate had befallen Ramanna. He said "he is there, go and see him" and pointed out the direction. She reached the place and saw her son prostrate on the ground with bleeding injuries. He spoke to her a little later and told her, when questioned, that Krishnappa Melanta and the 3rd accused stabbed him with swords, that accused 1, 2, 4 and 8 beat him with cudgels, and that his legs were pounded with stones by all of them.

5. We must now come to the version of Aithappa, P. W. 10. From the warehouse, he went that morning to a quarry in the neighbourhood, as was his wont, to ease himself and there he heard the cries "they beat and kill". He ran in that
30 direction and saw his brother being beaten near a laterite rock. Krishnappa and 3rd accused were cutting him with swords; accused 1 and 2 were striking him with cudgels; accused 4 to 7 were standing close by with cudgels. He raised cries. Incited by Krishnappa, the 1st accused came in the direction of the witness and the latter took to his heels; but the 1st accused overtook him and gave him two blows. The witness ran to the warehouse and found none there. He rested for a while and came back towards the scene of occurrence slowly. From some distance, he saw his mother at the top of the hill. He told her what had happened and cautioned her not to go to the place. But she ran up; the witness stood where he was. A little later, he heard his mother's cries and went up and found his brother Ramanna on
40 the ground at a place slightly to the east of the place where he was beaten. P. W. 8, the nephew, says he hurried to the spot on hearing from Vittal about the beating. While going up the *lachil*, he saw to the west of it eleven persons, descending the slope with cudgels in their hands; they were accused 1, 2, 4, 5, 6, 7, 9, 10, 11, 12 and 13.

6. Thus, the only eye-witnesses to the beating are P. Ws. 10 and 11. P. W. 9, the mother, saw Krishnappa and accused 1 to 3, 5, 6 and 7 and the 4th accused coming down from the *lachil* immediately after the occurrence. P. W. 8 the nephew saw from the eastern side of the *lachil* all the present accused, except accused 3 and 8, descending down the western foot path. P. Ws. 8 and 9 also say that when they saw Ramanna
50 Shetty, he told them how he came by the injuries. What he told the mother has been already stated; he told P. W. 8 that it was Kittanna and his people that beat him. P. Ws. 12 and 13 have also been called to tell us what the deceased told them about the occurrence. Vittal went to P. W. 12, a country physician, and told him that he was wanted. P. W. 12 came to the warehouse and saw Ramanna. The latter opened his eyes some time after he came, told the witness that he was reduced to that condition by Melanta and asked him to treat his sick wife till his return. P. W. 13 is a distant relation living in a neighbouring village: he repaired to the warehouse on hearing of the fate that befell Ramanna. He accompanied Ramanna in the boat on the final journey to Mangalore and while in the boat, he asked the deceased who beat him and got the reply
60 from him that Kittanna, the accused 1 to 3 and their tenants beat him.

7. Let us first deal with that portion of the evidence which relates to what the deceased is alleged to have told the witnesses about his assailants. He was battered very badly; the right tibia was fractured; he had eight incised wounds; and there were several contusions. It is probable that so much shock and haemorrhage led to loss of consciousness. The mother, who was the first to see him after he was beaten, says that he was unconscious to start with. P. W. 8, the nephew, would have us believe that the injured man was alternating between consciousness and unconsciousness right through and whenever he was conscious, he spoke with difficulty and in whispers. The two doctors that have been examined—P. Ws. 1 and 2—have expressed the opinion that if Ramanna had become unconscious after receiving the injuries, it was not at all likely he regained consciousness afterwards at any time. On this medical opinion, which is in full accord with the probabilities, we are forced to the conclusion that Ramanna could not have told any one who gave him the beating and that the evidence given in this respect by P. Ws. 8, 9, 12 and 13 is not true; it is fairly obvious that it was introduced to buttress the testimony of the eye-witnesses. 10

8. We shall next examine the statements of P. Ws. 8 and 9 as to their having seen all or some of the accused going away from the scene of occurrence immediately after the beating. P. W. 9 tells us that as she was mounting up the western foot-path after hearing Vittal's cry, she met three instalments of men coming down in the opposite direction—first Krishnappa and accused 1 to 3; then accused 5, 6 and 7; and lastly, the 4th accused; all of them fully armed, two with swords and the rest with cudgels. Her evidence further is that when she met the first group, she was pushed down by the 1st accused and the pot of milk she was carrying broke to pieces. No broken pieces of the earthen pot were discovered in the place the next day when the Circle Inspector, P. W. 14, went for investigation; Mr. Grant, the learned Counsel for the accused, made much of this and argued that it was a tell-tale circumstance from which we could conclude with certainty that the story of the woman going that way on the morning of the occurrence with a pot of milk on her head or in her hands was a pure myth. But I would not attach so much importance to the absence of the pot pieces; the place is a hilly slope and there is evidence that there was much rain on those days; if the story was a concocted one, it should have been very easy to introduce a few pieces of a broken mud pot at the place. But what is more to the point, in my opinion, is this. Aithappa and Vittal, P. Ws. 10 and 11, had seen the occurrence with their own eyes and at near quarters; they had raised cries and were chased away from the place; the assailants must have known that people would be rushing up to the rescue of Ramanna Shetty. Is it likely then that the accused marched down the frequented western foot-path with swords and cudgels in their hands so as to be seen by any one who might be coming up? The 4th accused was the last person that P. W. 9 met, at the top of the *lachil* almost. It is absurd to ask us to believe that he carried with him not only the cudgel with which he attacked Ramanna but also the latter's red shawl and scarf; why should he religiously carry these clothes? It will be remembered that the woman says that she saw Aithappa, P. W. 10, before she met the 4th accused and that she and Aithappa had a conversation with each other. Aithappa's evidence is that after he was beaten and chased from the scene of occurrence, he ran to the warehouse, took a little rest there, and wended his way back slowly. The distance from the warehouse to E is 22½ chains and he must have taken some time—about 15 or 20 minutes at the least—to return to the place where he saw his mother. It is rather hard to believe that the 4th accused was tarrying at the scene all this time. 30

9. P. W. 8 ran to the top from the fields he was ploughing by the route to the east of the *lachil*. It is while he was running and had almost reached the place where the deceased lay that he says he saw the several accused descending by the western foot-path. They were at a considerable distance from him and were to the south of the *lachil*; he had a lateral view of all of them. It is quite possible that he saw some men going down by the other way, but it is not probable that he was able to identify any of them by side views of their faces, especially at such a distance, when he himself was running to the aid of his injured uncle. Moreover, he says they were all near one another, almost in a group. Seethu, P. W. 9, met them in three instalments—first four, then three, and finally one. It is difficult to reconcile the two 40 50 60

versions, unless the first group waited after they met P. W. 9 for the rest to join them. Moreover, P. W. 8 sees eleven of the accused; P. W. 9 meets only eight.

10. For these reasons, I am afraid we must hold that the testimony of P. Ws. 8 and 9 as to their having seen the accused going away from the scene of occurrence cannot be accepted.

10. What remains is the evidence of Aithappa and Vittal, P. Ws. 10 and 11, younger brothers of the deceased Ramanna, boys of 16 and 12 years of age—though they have given their ages as 20 and 14 respectively—who say that they actually saw the beating. It is not clear from their evidence whether it was Vittal's cry that attracted Aithappa from the quarry or *vice versa* or whether it was the deceased's cries in distress while he was being beaten that both of them caught. Aithappa went very near the place of beating—within a few feet of it—and saw Kittanna and the 3rd accused attacking his brother with swords, accused 1 and 2 dealing him blows with cudgels, and accused 4 to 7 standing close by. Vittal says that he too went 10 feet near the place of occurrence; but what does he see? His brother had fallen down; Kittanna, accused 1, 2, and 3 were merely standing there with swords and cudgels; accused 6, 7, 10 and 11 were beating him; accused 4, 5, 8, 9, 12 and 13 were also close by with cudgels. The beating was at the place E by the side of a laterite rock on the foot-path to the north of the *lachil*. If both Aithappa and Vittala saw the beating, it is most strange that they did not see each other at the place. Can we say that they were there at different times and saw different parts of the beating? With so many assailants, the assault must have been quickly over and it seems to me that we cannot divide the transaction into subdivisions and hold that Aithappa saw one part of it and Vittala a latter part.

11. It is also difficult to believe that these little chips of boys were bold enough to venture so near the place of attack and that Vittal, the younger of the two, escaped through the serried ranks of the enemy and fled home by the eastern route. The injuries on P. Ws. 9, 10 and 11 described in the wound certificates, Exhibits C, D and G, have been relied on as indicating the truth of their version. The contused swelling about the size of a lime on the top of the right side of Seethu's forehead may have been due to other causes; she might have struck her head on the ground with grief on seeing her dying son. There was a contused swelling on the left fore-arm of P. W. 10 and a linear contusion across the back of his right thigh. P. W. 11 had similar contusions on the two thighs and he says he got them as the result of his having been beaten by accused 6 and 11 with finger-thick twigs. We can only say that the accused seem to have taken special care to deal with the two boys very mercifully, even though they raised cries for help and were within their grasp, as it were.

12. It is quite possible, nay it is probable, having regard to the bitter feeling that existed between the Melantas on the one hand and the deceased on the other, that the former and their henchmen were responsible for his murder. In fact, the statements given by some of the accused are themselves suggestive in this direction. It is said that Ramanna cut twigs in the *lachil* forest on the morning of the occurrence, that there was a fight between him and his men on the one hand and the forest guards of Krishnappa Melanta on the other. The 1st accused says it. The 4th accused and the 6th accused, who were the forest guards, speak to the fight and allege that there were two or three pariahs with them at the time. The 4th accused further says that the 6th accused was with him then but none of the other accused. Both of them, however, assert, very strangely, that they cannot say how exactly the deceased came by his injuries and who beat him. When the 6th accused was asked why he did not give this account in the lower court, he gave the silly explanation that he thought that he could do so before the higher court. Thus, it is obvious that the accused or some of them at any rate, know more of the occurrence than what they have chosen to tell us. But there is no duty cast on them to explain the event: it is for the prosecution to establish its case beyond reasonable doubt. On the evidence that has been placed before the court, it is difficult—almost impossible—to hold that the Crown has discharged this burden. The difficulties of the police in investigating such cases are great indeed; and when rich and influential men are involved, the task of detection becomes almost impossible. The Maganthadi house of the Melantas reigns supreme in the locality; their influence is paramount, and the neighbourhood is full of their tenants and

dependants. Disinterested evidence is difficult to get; and interested evidence is always liable to suspicion. All this is true. But we cannot substitute our moral convictions for legal proof and fill up voids and deficiencies in the prosecution case by attractive speculations. What probably happened was this. Ramanna was beaten and thrown aside like a dog by some men of Melanta's party; the incident reached the ears of Ramanna's people and they hurried to the spot. Not knowing who exactly were the culprits, a case was built up against the sworn enemies and as many adherents of theirs as possible, making the two boys as eye-witnesses.

13. The first charge against all the accused is that of rioting with deadly weapons; the second charge against accused 1, 2, 3, 6, 7, 10 and 11 is that of murder; 19 the third charge against the rest of the accused is also for murder, but constructively, the fourth charge is against accused 1 for hurt to P. Ws. 9 and 10 and against accused 6 and 11 for hurt to P. W. 11. The assessors have pronounced the accused not guilty of the charge of murder. The first three hold that the fourth charge has not been made out; but the last thinks that accused 1, 6 and 11 are guilty of hurt. As regards the first charge, all of them are of opinion that accused 4 and 6 alone are guilty, holding that there might have been three other people, or more than three with them at the time.

14. For the reasons given above, I have come to the conclusion, though reluctantly, that the prosecution has failed to establish its case. The accused are 20 acquitted of all the charges and are directed to be set at liberty.

Dictated to the shorthand writer and the transcript afterwards corrected and pronounced in open court this 31st day of March 1932.

(Sd.) N. CHANDRASEKHARA AIYAR,
2—4—1932. Sessions Judge.

APPENDIX.

The following witnesses were examined:—

FOR THE PROSECUTION.

1. Dr. K. E. Pothan (Assistant Surgeon).
2. Dr. P. Gopalkrishnaya (Sub Assistant Surgeon.)
3. Mr. M. Ganesh Rao (Huzur Sheristadar).
4. K. P. Venkappa Shetty.
5. Solomon Joshua (Revenue Inspector).
6. Mr. N. Krishnappa (Tahsildar)
7. B. Srinivasa Prabhu (Clerk)
8. Aithappa Shetty
9. Seethu (female)
10. Aithappa Shetty
11. Vittala Shetty
12. Dasanna Bhatta
13. Mundappa Shetty
14. Khan Saheb M. Schamnad (Inspector of Police).

FOR THE DEFENCE.

Nil.

The following Exhibits were filed:—

FOR PROSECUTION.

- | | | | | |
|----|-------------|--|-----|---------------------------------|
| A. | 9—10—1931. | Post mortem certificate. | | |
| B. | do. | Requisition to the Police. | | |
| C. | do. | Wound certificate granted to P. W. 9 Seethu. | | |
| D. | do. | Do. | do. | to P. W. 10 Aithappa Shetty. 50 |
| E. | do. | Do. | do. | to 4th accused. |
| F. | do. | Do. | do. | to 6th accused. |
| G. | 11—10—1931. | Do. | do. | to P. W. 11 Vittal Shetty. |

- H. 6—12—1927. Petition filed by the deceased Ramanna Shetty against Krishnappa Melanta and four others before the Sub Divisional Magistrate, Mangalore.
- J. 19— 9—1931. Do. filed by Krishnappa Melanta to the Revenue Inspector, Mangalore Firka.
- K. 11— 3—1929. Report submitted by the deceased to the Tahsildar, Mangalore Taluk.
- K1. 19— 3—1929. Do do
- L. 30—10—1929. Written statement filed by the deceased in R. C. No. 6/26 on the file of the Sub Magistrate, Bantwal.
- M. 9—10—1931. Inquest report.
- N. 1— 3—1932. Plan of the locality.
- O to O12. Do. Statements of the accused in the lower court.

MATERIAL OBJECT.

1. A sword.

(Sd). N. CHANDRASEKHARA AIYAR,
2—4—1932. Sessions Judge.

(True copy).

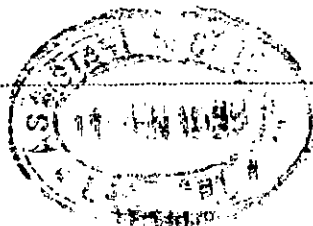
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is Judge.

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Subject.

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Criminal appeal - appeal against acquittal - S.C.10/32
on the file of the Sessions Judge, South Kanara - Recommended.

ENCLOSURES.

No

Ref.C1-No. 5309-32.

Spare copies.....

Station.....Mangalore..... Dated the.....9th June.....1932.

From (Name).....Khan Bahadur J. Hussain, Bar-at-law,
Designation).....Dt. Magistrate of South Kanara.

To The Secretary to the Government of Madras,

Law (General) Department,
Madras.

Sir,

M a d r a s .

H-5-5 m

I enclose herewith a copy of letter R.C.No.811/Genl.
dated 9-5-32
32/of the Dt. Superintendent of Police, South Kanara proposing
the filing of an appeal against the order of acquittal passed
by the Sessions Judge of South Kanara in S.C.10/32 and -----
recommend that the Government if they are justified may be
pleased to direct the Public Prosecutor, Madras to present an
appeal to the High Court of Judicature at Madras.

The Public Prosecutor, Mangalore who was consulted
in the matter has sent the accompanying draft appeal memo
which gives the grounds of appeal.

The slight delay in submitting this proposal is due

to the absence of the Public Prosecutor, Mangalore on tour in his capacity as President, Dt. Board and also to some correspondence between myself and the Public Prosecutor in the matter of this appeal.

Two printed copies of the Judgment in S.C.10/30 are submitted for reference.

• *A. K. Subramanian*
5672
For Dt. Magistrate.

Sub
9.6.32

Appeal Memo.

1. The findings of the Sessions Judge is against law and -- facts of the case.

2. There is abundant evidence, both documentary and oral that Krishnappa Melanta, the absconding accused, is a bitter enemy of the deceased. Exhibits H to L prove enmity beyond any doubt. Evidence of P.Ws. 3, 4, 6 and 9 give support. The evidence of P.W.6, the Tahsildar of Mangalore speaks to conduct of Krishnappa Melanta -- relating to a time immediately preceding the date of occurrence. Exhibit J dated 19-9-31 petition by Krishnappa speaks of the enmity between him and the deceased and of a probable breach of the peace. On 21-9-31 Krishnappa potail goes on leave without permission and on 9-10-31 the occurrence takes place. Evidence of P.W.6 is clear on the point. A perusal of the above Exhibits and the connected oral evidence referred to above leave no doubt that the enmity is all one sided and the deceased is the victim.

3. Krishnappa Melanta is admittedly a very rich and influential man and wanted to do away with the deceased.

4. The Sessions Judge in para 12 of the judgment says that the Melantas and their hunchmen were responsible for the murder and that the Melantas are rich and influential men.

5. The Sessions Judge has wrongly disbelieved the evidence. The scene of occurrence is only about 4 miles from the Hospital -- where the deceased was taken and where he died. Inquest was held within 3 or 4 hours after the occurrence. P.W. 9, mother, and -- P.W. 10, brother of the deceased and P.W. 13, were examined at the inquest in the Hospital. There was absolutely no time to cook up a story. They, P.W. 9 and 10 give detailed account of the occurrence. P.W. 11 fully corroborates them. A searching cross-examination did not elicit any point against prosecution. The Sessions Judge was not justified in holding that the case was got up.

6. The Sessions Judge went clearly wrong in disbelieving the evidence of P.Ws. 8 to 10 who say that the deceased spoke and -- implicated the accused. P.W.1, Dr. Pothan, clearly says that in -- this case the deceased could have talked. The Sessions Judge went wrong when he says that the evidence of the Doctors is otherwise. P.W.2 has not examined the deceased. His statements will clearly

show that his opinion is of no value even if he had said that the deceased could not have talked.

7. Accused 1, 4 and 6 practically admit the occurrence. --
Accused 4 and 6 admit that the deceased was beaten on the date, time and place alleged by the prosecution. Their statements in the -- Sessions Court may be perused.

8. Accused 4 and 6 were in the Hospital at the time of the inquest. Accused 4 recorded a complaint before the police in the Hospital and the said complaint gives details of the occurrence. The Sessions Judge wrongly excluded the complaint. Evidence of P.W. 14 is material on this point.

9. The Sessions Judge holds in para 12 that the two boys -- P.Ws. 10 and 11 were made eye witnesses. There is absolutely no foundation for this. The evidence of the two boys, of P.W. 9, the mother and others speaking to the statements made by the deceased is unassailable and true in the highest degree.

10. The statements of accused 1, 4 and 6 admitting the -- occurrence read with the evidence of P.W. 9, 10, 11 and others -- places the prosecution evidence beyond any doubt.

11. The case against Krishnappa Melanta, abettor, accused is still pending.

12. The accused were wrongly acquitted.

Ans
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Copy of letter R.C.No. 811-Genl.-32, dated 9/14th May 1932, from the District Superintendent of Police, South Kanara, to the -- District Magistrate, South Kanara.

Subject:- Criminal Justice - S.C.No. 10/1932 - Acquittal
Appeal against - Requested.

This is a case in which the deceased acting potail of Munnur village was hacked in a brutal manner by a number of persons with swords and bludgeons on the morning of 9.10.31. The man died in the Mangalore Hospital within a few hours after the commission of the offence. The police investigated this case and fifteen persons were charged including one Krishnappa Melanta who is absconding even now - thirteen were committed to the Sessions and the Sessions Judge acquitted all of them in S.C.No. 10/32.

The acquittal of this case is really regrettable. On the -- evidence adduced, I think this was a fit case for conviction. A -- perusal of the judgment shows that there has been a denial of justice.

The facts of the case are simple. The deceased Ramanna Shetty left his house early morning to go to one Vasu Bhatta for medicine. As he was going along the 'Lachil' a small hill, he was wasylaid cut and beaten. P.W.s 10 and 11 attracted by the cries of the deceased had seen the beating. Both of them were beaten and driven away. The mother of the deceased P.W.9 saw several of these accused marching back after the commission of the offence.

It must be conceded that P.W.9, the mother, P.Ws.10 and 11, the brothers of the deceased are interested. But so long as the fact that the deceased was murdered is true and the time, place and occasion are such that only relations ^{who} were close by could come to the rescue on hearing cries. This was early in the morning and close to the deceased's house and the occurrence takes place at a time at which it was expected to happen. These witnesses had injuries and the version given in the Sessions Court was the very version given at the inquest which was held a few hours after the offence. There was absolutely no time to think of concoction nor getting these injuries inflicted. P.Ws.9 and 10 were examined by the Medical Officer that very day and P.W.11 the next day. It is a pity that the Sessions Judge did not take into consideration this aspect of the case.

Next I go to the reasons assigned by the Sessions Judge in disbelieving the P.W.s. In para 10 of the Judgment he disbelieves them because he says 'with so many assailants the assault must have been quickly over and it seems to me that we cannot divide the transactions into sub-divisions and hold that P.W.10 saw one part of it and P.W.11 a later part.' It is clear from the evidence that P.W.10 was the first to go to the scene. It is also not necessary that one should have been the other. P.W.11 went later./ It is perfectly clear that one had witnessed the earlier portion of the offence and the other the latter. P.W.9's evidence shows that the deceased had said that he was actually tortured. If this was so the offence must have taken a pretty long time. It is not necessary that the transaction took place in a short time.

In para 11 the Sessions Judge disbelieves them merely because they are young boys. My opinion is that because they were young they rushed to the scene un^dermin^g of the consequences and gave out an unvarnished true statement of the occurrence as they saw it. There is nothing improbable in what they said. The other point is that the injuries on them were not serious and the Sessions Judge remarks "we can only say that the accused seem to have taken special care to deal with the boys mercifully." The intention of the accused was to kill the deceased and that intention they carried into effect. These boys probably were considered not worth being handled roughly as the accused knew they would run away by a mere threat or a little beating.

The next argument urged by the Sessions Judge for disbelieving P.W.9 is that the accused would not have marched down the frequented western footpath with swords and cudgels in their hands so as to be seen by any one who might be coming up. For this, I would only point out that in the course of the Judgment the Sessions Judge has held "that the Maganthadi house of the Melantas reigns supreme in the locality. Their influence is paramount and the neighbourhood is full of their tenants and dependants". This being the case there was absolutely no fear for the accused to pass by any footpath in the village. Further, swords and cudgels are things which cannot be concealed easily. When they knew all who would be attracted

the scene are their own tenants and dependants, they would certainly not have thought of concealing themselves or their weapons. It was by sheer accident that P.W.9 comes there. There is therefore nothing improbable in this.

Then coming to the evidence of P.W.s 1 and 2 the Medical Officers, it is a pity that the Sessions Judge has considered only one portion of their evidence and not the other. P.W.1 has stated in re-examination that in this case there might have been moments of revival of consciousness on the part of the deceased after the beating. As regards P.W.2 he bungled in cross-examination and in re-examination showed that he could not be depended upon. But it is regrettable that his answers in re-examination which appears to have been heard by the Public Prosecutor and the Vakils that had thronged to the court to hear Mr. Nugent Grant and which was received with a roar of laughter by them, does not seem to have been recorded. The answer was --- very important. He said he would change his opinion given in --- cross under certain circumstances, thus rendering his opinion in cross valueless.

In cross he said if the deceased was found unconscious by the mother and he was also found unconscious after a lapse of --- 3 hours, the deceased would not have recovered at all during the interval. When it was suggested in re-examination that if the mother had found him talking afterwards if he would change his opinion, he said he would. The Public Prosecutor, South Kanara, would be able to throw more light on these points.

After all, this is a matter of opinion and ^{the} learned Judge does not appear to have been quite right in having relied on it and concluded that P.W.s 6,9,10,11,12 and 13 all of them were stating falsehood when they deposed that the deceased spoke ---- before he expired in the hospital.

That there is very strong motive for the accused to commit the offence is not denied even by the defence. The statements of the accused made in the Sessions Court admittedly suggest "that Melantas and their henchmen were responsible for this murder". Coupled with this there is the evidence of the eyewitnesses P.W.s 10 and 11 who no doubt are interested but competent. They gave

this version of the incident within 3 hours after the incident not giving any room to suppose that they could have concocted a story. It was not challenged in the Sessions Court that any portion of the story was introduced later on. This was given in full detail at the time of inquest. The Sessions Judge ought to have considered this aspect of the case. In my opinion this is not a question of moral conviction alone, the case merited a conviction on legal --- evidence as well.

I think this is a fit case to be taken up to the High Court. The Public Prosecutor, who has thoroughly studied the case and --- conducted the prosecution so well may kindly be consulted and if he agrees with me, I request you to kindly move the Government to --- prefer an appeal against acquittal.

Aug 8
9.6.32

16

Law (General)

C. No. 2915-B

Endt 2915-B-1 d. 14.6.32

Criminal appeal. - appeal against acquittal - S.C. No. 10/32 on the file of the Sessions Judge, South Kanara - From the Dm. South Kanara, Ref. No. C-1-5309-32 d. 9.6.32

Referred to the P. P. Madras for opinion whether an appeal to the High Court against the judgment of the Sessions Judge South Kanara, acquitting the accused in S.C. No. 10/32 on his file is likely to be successful. It is requested to forward his opinion by the 25th June, 1932

Impd. by	Van Port inger
Dpr's. initials	COJ
Date	15.6.1932

To the P. P. Madras with a copy of the Dm's letter and its encl. in orig. to be ret'd. with reply.

p. 3-15 C.F.

p. 9 C.F.

13.6.32

100w
12.6.32

18R
14/6

Not

The date of the Endt is 31.3.32; and the usual appeal time of 3 months expires by 30.6.32

13.6.32

100w
12.6.32 R. 14.7.32

JUDICIAL DEPARTMENT.

L 443486B
C.F. 30
19.7.32

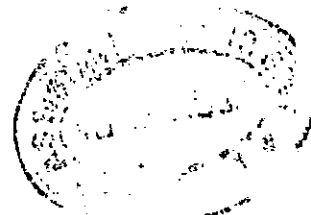
Received

19

Registered

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Subject.



Appeal against acquittal - S.C.No.10 of 32 -
Sessions Judge, South Kanara -
Forwarding opinion.

ENCLOSURES.

No.

Spare copies

Opinion No. 30 of 32.

Station Madras, Dated the 18th July 1932.

From (Name) L. H. Bewes Esq.,
(Designation) Public Prosecutor, Madras.

To The Secretary to the Government of Madras,
Law (General) Department.

Sir,

With reference to Endorsement No. 2915 B-1,
Law (General) dated 14th June 1932, I have the honour
to forward herewith my opinion in the matter.

2. The enclosures received with the endorsement
and the copies of evidence received from the District
Magistrate, South Kanara, are herewith returned.

I have the honour to be,
Sir,
Your most obedient servant,

L. H. Bewes

Public Prosecutor.

RS/18-7.

16am Endorsement No. 2915 B-1, Law (General) dated 14--6--1952

O P I N I O N

In this case thirteen accused were charged before Sessions Judge of South Kanara under Section 302 I.P.C for the murder of one Ramanna Shetty on the early morning of the 9th October last year, The Sessions Judge acquitted all the accused.

There is overwhelming evidence in the case that the deceased and Krishnappa Melanta (who is still absconding) were at logger heads for a long time. Exhibits K, K-1, and the evidence of P.Ws 3, 4, 5, 6 and 8 clearly establish the strong motive for Krishnappa and his brother A-1 to commit the crime. Accused 2 is the brother-in-law of accused 1; and accused 3 is a neighbour and the rest of the accused are tenants of Krishnappa.

The evidence against the accused fall under three heads. The first is the statements of the deceased to P.Ws 8, 9, 12 and 13. The evidence of the two Doctors, P.Ws 1 and 2... throws some doubt as to whether the deceased in fact made those statements. Undoubtedly he received very serious injuries on the arms and legs which, in all probability, resulted in his unconsciousness. I cannot say that the view of the Sessions Judge, that the deceased made the statements to the witnesses is open to doubt, is not warranted.

The second part of the evidence ends on the statements of the prosecution witnesses 8 and 9. P.W. 8 says that when he went up to the hall hearing a cry he saw eleven accused coming down with cudgels. P.W. 9 says that she saw first Krishnappa an accused coming down. Later she let accused 3, 5 and 7 run down with cudgels and she saw accused 4 going to the deceased's shop under his armpit. It is not difficult to reconcile the evidence of these witnesses. I agree with the finding of the Sessions Judge in paragraph 10 of the judgment.

I am now left with the evidence of the two eye-witnesses 10 and 11. Prima facie, I do not find anything intrinsically wrong in their evidence. P.W. 10 must have been there, because he was injured and was examined at the hospital that very day. The other eye-witness was examined the very following day. The Sessions Judge says that it is not strange that two eye-witnesses did not see each other at the place of occurrence. I do not see anything strange about it. P.W. 10 says he saw the beating, he raised the cry, he was beaten and so he ran to the house and then returned to the scene; P.W. 11, in the latter part of his evidence, says by brother Mathappa (P.W. 12) was there after I reached the place. The other remarks given in paragraph 11 of the judgment do not seem to be very convincing. But all that we are to decide whether the deceased made the attempt to run after

p13 copy

receiving the injuries and as to whether P.Ws 8 and 9 saw the accused coming down the hill after committing the deed, it is very difficult to convince an appellate Court that the conviction should be based entirely on the evidence of these two eye-witnesses disregarding the rest of the case for the prosecution. There is also the possibility that only accused 4, 5, 6, 9 and 11 were the actual perpetrators of the crime and the important men Krishnappa Melenta, his brother the first accused and their brother-in-law the second accused and others have been implicated in the case.

There is one other fact I desire to refer to. There is a counter complaint made by the fourth accused on the day of the occurrence itself. The learned Sessions Judge has ruled it out as inadmissible. I do not think the recent Full Bench ruling (35 L.W.705) under Section 162, of the Code of Criminal Procedure, covers this point. The statement of the fourth accused is not a statement made to the police during the investigation. It ought to have been admitted not as a confession but as an admission.

On the whole I am of opinion that this is a very unfortunate case in which there is no doubt some of the accused at least did take an active part in the murder; but there is no certainty that all the accused before the Court were present at the scene when the offence was committed.

I am of opinion that the High Court
against the admission of the case is not likely
to be successful.

M a r a s,
18th July 1957.

RS/18-7

L H Bann

18th July 1957

18/5/57

25/7/32 B



LAW I-4-120-22-12-30.

Received

193

Registered

193

criminal appeal - Appeal against acquittal - ~~Negative~~.

Sessions Case No. 10/32, *Sessions Judge, South Kanara* -
Declined.

W (GENERAL) DEPARTMENT.

Read—the following papers:—

[C. No. 29/5-8] From the District Magistrate, *S. Kanara* ^{rel.} No. 1-5309/32 dated 9.6.1932 *pp 15 CF*
Endorsement to the Public Prosecutor, Madras, No. 29/5-8 dated 14.6.1932 *pp 16 CF*
[C. No. 34/8-B] From the Public Prosecutor, Madras ^{opinion} No. 30/32 dated 18.7.1932 *pp 1-2*

ORDER—Mis. No. 275/, dated 25.7.1932.

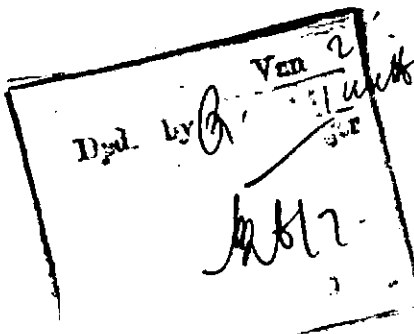
The Government do not consider it advisable to appeal to the High Court
against the judgment of the *Sessions Judge, South Kanara*
acquitting the accused in *S.C. No. 10* of 1932 on his file.

*for pp 15
from a
wide p 11 CF*

*8
27/7/32
KOW
21-7-32*

True Extract

21/7/32



Secretary to Government

22-7-32



To

The District Magistrate, *S. Kanara* (*original*)
The Public Prosecutor, Madras. *700* (*with the Sessions Judge and copies of evidence retd*)
pp 9-15 CF